

REMARKS/ARGUMENTS

Favorable consideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 53-81 are pending in the application. Claims 1-52 have been cancelled without prejudice. Claims 53-81 are added by the present amendment.

In the outstanding Office Action, Claims 1-3, 8-14, 18, 19, 21-29, 34-40, 44, 45, and 47-52 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Downing et al. (U.S. Patent No. 6,373,855) in view of Voois et al. (U.S. Patent No. 6,404,776); Claims 4-6, 15-17, 30-32, and 41-43 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Downing in view of Voois et al. in further view of Wine et al. (U.S. Patent No. 6,477,201); Claims 7, 20, 33 and 46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Downing in view of Voois in further view of Forler (U.S. Patent No. 5,327,176).

New Claims 53-81 are introduced to more clearly describe and distinctly claim Applicants' invention. Support for new Claims 53-81 is found in Applicants' originally filed specification.<sup>1</sup> No new matter is added.

Claim 53 recites a method performed by a stream server, e.g., in response to a client device signaling the stream server with an indication of a client requested presentation action that, when put into effect, reduces or eliminates the data rate of a first data stream or eliminates the first data stream which is being sent to the client device. For example, a request affecting the presentation of audio, such as a mute request, may result in an audio stream being eliminated. As recited in claim 53, the stream server system implements the client requested presentation action with the result that the client device receives the first data stream at a reduced data rate or the first data stream is eliminated. Furthermore, the stream server system makes a determination of an amount that a data rate of a second data stream

---

<sup>1</sup> Specification, page 9, line 15 - page 15, line 5.

including data of a second type may be increased as a result of an effect on transmission bandwidth corresponding to the reduction in the data rate of the first data stream or the elimination of the first data stream.

Downing describes a system and method for allocating video bandwidth of a channel that carries both video and audio information. However, Downing does not disclose or suggest Applicants' claimed act of "receiving a signal from a client device, said signal including an indication of a client requested presentation action that, when put into effect by the stream server, involves reducing a data rate of a first data stream being sent from the stream server to the client device or eliminating the transmission of the first data stream to the client device." From Applicants' specification, non-limiting examples of 'an indication of a client action' includes a) muting audio, switching from stereo to mono, etc.). Rather, Downing only discloses that the client signals the stream server with bandwidth adjustment instructions.<sup>2</sup>

Because Downing does not disclose or suggest Applicants' claimed act of "signaling... an indication of a client request action," Downing also fails to disclose or suggest Applicants' claimed "implementing the client requested presentation action, said act of implementing the client requested presentation action including reducing the data rate of the first data stream or eliminating the transmission of the first data stream to the client device." Rather, Downing discloses that the stream server puts into effect bandwidth adjustment instructions received from the client, where the determination of said bandwidth adjustments takes place in the client. Downing fails to disclose any client requested presentation action being communicated to the server or acted upon by the server.

Finally, Downing also fails to disclose or suggest Applicants' claimed "determining an amount that a data rate of a second data stream including data of a second type may be

---

<sup>2</sup> Downing, col. 5, lines 38-54.

increased as a result of an effect on transmission bandwidth corresponding to the reduction in the data rate of the first data stream or the elimination of the first data stream” Instead, Downing discloses the client makes the bandwidth adjustment determination. Furthermore, this client based determination is made upon the quality of the A-V signal received by the client, not based upon the bandwidth effects determined by the server putting a client requested presentation action into effect.<sup>3</sup>

Summarizing, the present claim 53 is directed to a method where a stream server responds to a client that provides to the server an indication of a presentation action requested by the client. The stream server determines a rate adjustment for a second data stream according to bandwidth effects of putting the client requested presentation action into effect. Downing teaches the client makes a bandwidth determination based on the quality of received streams; the client communicates bandwidth adjustment instructions to the server, and the server implements the adjustments. Applicants have considered the other applied references, including the Voois et al. patent and submit that these references do not cure the deficiencies of Downing.

MPEP §706.02(j) notes that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Also, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Without addressing the first two prongs of the test of

---

<sup>3</sup> Id.

obviousness, Applicants submit that Claim 53 patentably distinguishes over Downing at least because Downing fails to disclose all the features of Applicants' claimed invention.

Applicants submit that independent Claims 61, 65, 71 and 79-81 are distinct over Downing and the other references, alone or in combination, for reasons similar to those discussed above relative to Claim 53.

Dependent Claim 57 recites that the second data stream, for which the amount that a data rate may be increased is determined, is part of the same Single Program Transport Stream as the first data stream. Claims 67 and 75 recite similar aspects. No such teaching or suggestion thereof can be found in Downing or any of the cited references.

Dependent Claim 58 recites that the second data stream, for which the amount that a data rate may be increased is determined, is part of a different Single Program Transport Stream than the first data stream, but which is part of the same Multiple Program Transport Stream as the first data stream. Claims 68 and 76 recite similar aspects. No such teaching or suggestion thereof can be found in Downing or any of the cited references.

Dependent Claim 59 recites the act of reducing the data rate of the first data stream or eliminating the transmission of the first data stream to the client device includes:

- providing a stream of packets as part of a packet flow to a modified multiplexing device, said stream of packets including data packets which can be sent to the client device in said first data stream;
- operating the modified multiplexer to perform a filtering operation on said stream of packets to control the amount of data included in the first data stream; and
- operating the modified multiplexer to output said first data stream.

Claims 70 and 77 recite similar features. No such teaching, nor suggestion thereof, is found in any of the cited references.

Dependent Claim 60 recites the stream server providing the second data stream to a device other than the client device. Dependent Claims 69 and 78 recite similar aspects. No such teaching, nor suggestion thereof, is found in any of the cited references.

Accordingly, in view of the present amendment and in light of the previous discussion, Applicants respectfully submit that the present application is in condition for allowance and respectfully request an early and favorable action to that effect.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



James J. Kulbaski  
Attorney of Record  
Registration No. 34,648

Customer Number  
**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 06/04)  
JJM/MEM/rca

Michael E. Monaco  
Registration No. 52,041